

Atty. Dkt. No. 6173-1003US

**REMARKS**

Claims 1-22 are pending in this application. Claim 6 has been amended by this Amendment.

The Office Action dated July 23, 2004 objected to the title; rejected claim 6 as being indefinite; and rejected claims 1-8, 10-15, 19 and 20 as being obvious in view of prior art. Applicants gratefully acknowledge the indication that claims 9, 16-18, 21 and 22 contain allowable subject matter.

**Title**

The reasons for the objection to the title are in part 5.0 on page 6 of the Office Action. The title is objected to "because it is too long." Applicants have thus amended the title to remove the phrase "in a radio communication system" as suggested. It was also suggested that the title be amended to refer to "dynamically selecting a channel" or measuring "interference level." Applicants respectfully decline to make these changes since they do not shorten the title and the independent claims do not recite these features. Applicants respectfully submit that the title, as amended, is not unduly lengthy.

**Indefiniteness Rejection**

The grounds for the indefiniteness rejection of claim 6 is set forth in part 2.0 on page 2 of the Office Action. The rejection states that the phrase "lowest maximum noise level" is unclear. Applicants have amended claim 6 to clarify the language and respectfully submit that the rejection has been overcome by this amendment.

**Obviousness Rejection**

The grounds for the obviousness rejection of claims 1-8, 10-15, 19 and 20 is set forth in part 4.0 on pages 2-6 of the Office Action. With respect to independent claims 1 and 20, the

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Examiner relies solely upon the second embodiment illustrated in Fig. 4 and described at page 5, line 34, to page 6, line 5, of EP Patent Document No. 1009182A2 to Sonetaka (this embodiment hereinafter being referred to merely as "Sonetaka" for the sake of convenience). Applicants respectfully traverse the rejection and submit that the obviousness rejection fails to establish a *prima facie* case that each and every one of the combination of features recited in independent claims 1 and 20 is obvious in view of Sonetaka.

For example, independent claim 1 directed to an apparatus recites "a frequency level quality indicia measurer . . . measuring communication quality indicia at a selected plurality of different global frequency levels . . ." and "a global channel selection positioned at the network management station". Furthermore, claim 1 recites that the global channel selector selects "a first global frequency level at which to define a first global communication channel upon which to communicate first global communication signals with, and between, all of the first and at least second nodes." Independent claim 20 directed to a method similarly recites ". . .measuring communication quality indicia at a selected plurality of different global frequency levels . . ." and selecting "a global frequency level at which to define a first global communication channel upon which to communicate first global communication signals with, and between, all of the first and at least second nodes." The global evaluation and assignment provides an advantage that a globally used control channel frequency can be easily changed if necessary and an optimum frequency level can be determined based on an averaging of the summation of all measurement values (see, for example, page 26, line 20, to page 27, line 10 of the original specification).

In contrast to these recited features concerning a single global frequency level for communications between network nodes, Sonetaka involves the local assignment of channels. In particular, a designated master base station sends a channel information request to other base stations serving as slave stations. In response to this channel information request, the slave stations send information on "interference level, a desired channel number etc." to the master station, which in turn selects channels for the slave stations. The slave stations then use the selected channel for communication with subscriber terminals, rather than for communication

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with the master base station or with other slave base stations. (see paragraph 0029 of EP Patent Document No. 1009182A2).

The rejection of claim 1 on pages 2-3 states that the master in Sonetaka "selects a channel for all slave stations or global channel upon which to communicate" and the rejection of claim 20 on page 6 states that the master in Sonetaka "assigns a communication channel to all of the slaves". This statement is incorrect at least because Sonetaka does not select a single channel for all slave stations. Both paragraphs 0029 and 0041 of EP Document No. 1009182A2 refers to radio channels (plural) rather than to a single global radio channel used by all of the radio stations. There is no indication that all of the measurements received from the slave base stations are jointly evaluated in Sonetaka, rather than on a base station by base station basis, as would be necessary to determine the best global frequency to be commonly used by all base stations. Finally, even if the above differences did not exist, there is still the basic difference that the channels selected by the master base station in Sonetaka are used for communication between the base stations and subscriber terminals, whereas the claims explicitly recite the selection of a global frequency for communication with and between the network nodes.

The rejections of claims 1 and 20 further acknowledge that Sonetaka does not have all of the features of the independent claims, but asserts that these features would have been obvious to one of ordinary skill in the art at the time of the invention. No secondary reference is cited or relied upon to support this assertion. Applicants respectfully submit that the simple conclusion of obviousness without citing any secondary reference or any other support for the assertion wholly and utterly fails to make out even a prima facie case of obviousness. Furthermore, it does not permit applicants to determine the propriety of the assertion as required by 35 USC 132.

### Dependent Claims 2-12

Applicants respectfully submit that the obviousness rejection fails to establish a prima facie case of obviousness for dependent claims 2-12. There is no suggestion in Sonetaka or otherwise for the listing of values recited in claim 2, the control channel recited in claim 7, or the details or the measurements or re-measurements recited in claims 8-12.

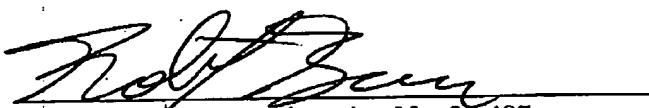
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**Cited Reference**

At part 7.0 on page 7 of the Office Action, US Patent No. 6,675,012 is referred to as "prior art." Applicants note that the cited reference is not prior art since its earliest priority date (March 8, 2001 filing date of the provisional application) is after the filing date (January 19, 2001) of the present application.

Please charge any fees due in connection with the filing of this Amendment, to Deposit Account No. 02-4270 (Dkt. No. 6173-1003US) and please credit any overpayment or excess fees to such deposit account.

Respectfully submitted,



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